

On November 3, 2005, the Commission approved a [proposed exempt amendment package](#) to the Commission Rules.

The Commission will be accepting public comments for sixty days, from November 4, 2005 until January 3, 2006. After the 60 day public comment period, the Commission will consider public comments and either make amendments to or adopt the final rule at its regularly scheduled public meeting on January 13, 2006 at 9:30 AM. Public comments can be submitted to:

Name:	Genevra Richardson, Campaign Finance Manager Citizens Clean Elections Commission
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NOTICE OF FINAL EXEMPT RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

<u>1.</u>	<u>Sections Affected</u>	<u>Rulemaking Action</u>
	R2-20-101	Amend
	R2-20-103	Amend
	R2-20-104	Amend
	R2-20-107	Repeal
	R2-20-109	Amend
	R2-20-111	Amend
	R2-20-112	Repeal
	R2-20-113	New Section
	R2-20-203	Amend
	R2-20-205	Amend
	R2-20-206	Amend
	R2-20-208	Amend
	R2-20-212	Repeal
	R2-20-214	Amend
	R2-20-217	Amend
	R2-20-218	Repeal
	R2-20-223	Amend
	R2-20-229	Repeal
	R2-20-230	Repeal
	R2-20-401	New Section
	R2-20-402	New Section
	R2-20-403	New Section

R2-20-404	New Section
R2-20-405	New Section
R2-20-406	New Section
R2-20-701	Amend
R2-20-702	Repeal
R2-20-702	New Section
R2-20-703	Repeal
R2-20-703	New Section
R2-20-704	Repeal
R2-20-704	New Section
R2-20-705	Repeal
R2-20-705	New Section
R2-20-706	Repeal
R2-20-707	Repeal
R2-20-708	Repeal
R2-20-709	Repeal
R2-20-710	Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 16-956(C), 16-956(D), 16-958(F)

Implementing statute: A.R.S. §§ 16-940 through -961

Statute Authorizing the Exemption: A.R.S. § 16-956(C)

3. The effective date of the rules:

Upon pre-clearance from the Department of Justice, May 28, 2004.

4. A list of all previous notices appearing in the Register addressing the exempt rule:

(Name of notice): (volume #) A.A.R. (page #), (date)

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Todd Lang, Executive Director
Address: 1616 W. Adams, #110
Telephone: 602-364-3477
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E-mail: todd.lang@azcleanelections.gov

OR

Name: Genevra Richardson, Campaign Finance Manager
Address: 1616 W. Adams, #110
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6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

The Commission is complying with A.R.S. §§ 16-956(C), 16-956(D) and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through -961) to implement rules related to candidate communication and certification, debates, bookkeeping, matching funds, complaints, enforcement, audits, use of campaign funds and use of assets.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact:

Not applicable.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Upon receiving comments from the public after the rules were proposed, additional changes were incorporated into the following rules, and noticed for additional public comment for 60 days:

R2-20-101: Minor changes to the definitions of “audit, candidate, independent candidate and opposed.” “Fixed asset” definition was added.

R2-20-103 (G): References to electronic mail and facsimile were removed because a copy of communication will be sent electronically if possible. Staff will always send communication via certified mail; and an electronic version if possible. It also eliminates concerns expressed that candidates will not receive notice if they do not regularly check their email or fax machine.

R2-20-104 (B): Removed surplus monies. Surplus money is a defined term. If a candidate has cash on hand, plus debt, from a prior campaign, then that money is not surplus money.

R2-20-104 (F)(2): Changed the individual contribution limit of officeholder expenses to not exceed one-half the early contribution limit.

R2-20-104 (J): Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01.

R2-20-109: The Commission adopted an alternative to this section, which reorganizes the rule structure and establishes that a participating candidate must return the money to the Commission within five days of filing reports.

R2-20-111 (B) (2): Added “designated agent” of the treasurer may approve expenditures, which is consistent with A.R.S. § 16-904(A).

R2-20-112: The Commission posted alternative 1, to amend, or alternative 2, to repeal the rule, for public comment. After the 60 days, the Commission approved alternative 2, which was to repeal the inaugural expenses rule.

R2-20-113 (A): Replaces references to “communication” with “expenditure.” Communication may not include all expenditures.

R2-20-403 (B): Adds provision that fieldwork may be conducted at one central location, such as the Commission office.

R2-20-403 (C): Removes the reference to committee personnel. Instead, the candidate shall be present for the fieldwork and familiar with the records.

R2-20-702: Rule establishes specific limits for food and beverages for staff and volunteers. Moves definition of fixed asset to R2-20-101.

R2-20-703 (B) (4): Deletes rule that requires documentation for food or beverage purchase and who consumed the food or beverage because it would be overly burdensome. Candidates still have the burden to show that expenditures are for direct campaign purposes.

R2-20-704: Interest on repayments to the Commission are in accordance with A.R.S. § 44-1201(A).

11. A summary of the comments made regarding the rule and the agency response to them:

The Commission received several comments from the general public, elected officials, past candidates, interested organizations, staff and Commission members and incorporated these comments into proposed changes that the Commission discussed and voted on during open public meetings.

R2-20-101(4), Definition of candidate. Commission adopted the proposed suggestion to remove gender specific references, and to remove “pursuant to the act” because it limits the definition only to participating candidates.

R2-20-103(G), Delivery of subpoenas. References to electronic mail and facsimile were removed because a copy of communication will be sent electronically if possible. Staff will always send communication via certified mail; and an electronic version if possible. It also eliminates concerns expressed that candidates will not receive notice if they do not regularly check their email or fax machine.

R2-20-104(B), Surplus monies. Received public comment that there is no time restriction for disposing of funds, which could create a loophole. Wanted clarification that it did not conflict with A.R.S. § 16-915.01. The Commission approved removing surplus monies. Surplus money is a defined term. If a candidate has cash on hand, plus debt, equal to or greater than the amount of cash on hand from a prior campaign, then that money is not surplus money.

R2-20-104(G), Officeholder expenses. Suggested contributions from individuals be limited to \$25 per individual and aggregate total of \$1000. After discussion, the Commission felt this limit was too restrictive and approved a change to limit contributions from individuals to not exceed one-half the early contribution limit. The sum of the money raised shall not exceed twice the early contribution limit applicable to the officeholder’s current office.

R2-20-111(B)(2), Books and Records requirements. The Commission adopted comments proposing that a “designated agent” of the treasurer may also approve expenditures, which is consistent with A.R.S. § 16-904(A).

R2-20-205 and R2-20-206, Complaints. Both rules were amended as a result of public comments to incorporate the shortened time period of responding to complaints to five days, rather than 14 days.

R2-20-403 (B), Conduct of Fieldwork. As a result of comment, the Commission added the provision that fieldwork may be conducted at one central location, such as the Commission office.

R2-20-703, Documentation for Direct Campaign Expenditures. The Commission received public comments that proposed deleting “each person” and adding “the total number of persons.” The Commission deleted the rule that requires documentation for food or beverage purchase and who consumed the food or beverage because it would be overly burdensome. Candidates still have the burden to show that expenditures are for direct campaign purposes. This was an agreeable alternative.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

13. Incorporations by reference and their location in the rules:

None.

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

SECTION

R2-20-101. Definitions

R2-20-103. ~~Time Calculations~~ Communications: Time and Method

R2-20-104. Certification as a Participating Candidate

R2-20-107. ~~Use of Clean Elections Funds~~ Repealed

R2-20-109. Reporting Requirements

R2-20-111. Books and Records Requirements

R2-20-112. ~~Inaugural Expenses~~ Repealed

R2-20-113. ~~Repealed~~ Calculation of Matching Funds

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

SECTION

R2-20-203. Complaints

R2-20-205. Opportunity for No Action on Complaint-Generated Matters

R2-20-206. Administrative Counsel's Recommendation on Complaint-Generated Matters

R2-20-208. Complaint Processing; Notification

R2-20-212. ~~Service of Subpoenas, Orders and Notifications~~ Repealed

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

R2-20-217. Enforcement Proceedings

R2-20-218. ~~Public Disclosure of Commission Action~~ Repealed

- R2-20-223. Notice of Appealable Agency Action
- R2-20-229. ~~Debates Sponsored by the Commission~~ Repealed
- R2-20-230. ~~Exemption from Participating in a Debate~~ Repealed

ARTICLE 4. ~~RESERVED~~ AUDITS

SECTION

- R2-20-401. Purpose and Scope
- R2-20-402. General
- R2-20-403. Conduct of Fieldwork
- R2-20-404. Preliminary Audit Report
- R2-20-405. Final Audit Report
- R2-20-406. Release of Audit Report

ARTICLE 7. ~~AUDITS AND REPAYMENTS~~ USE OF FUNDS AND REPAYMENT

SECTION

- R2-20-701. Purpose and Scope
- R2-20-702. ~~General~~ Use of Campaign Funds
- R2-20-703. ~~Conduct of Fieldwork~~ Documentation for Direct Campaign Expenditures
- R2-20-704. ~~Preliminary Audit Report~~ Repayment
- R2-20-705. ~~Final Audit Report~~ Additional Audits or Repayment Determinations
- R2-20-706. ~~Release of Audit Report~~ Repealed
- R2-20-707. ~~Repayment~~ Repealed
- R2-20-708. ~~Additional Audits or Repayment Determinations~~ Repealed
- R2-20-709. ~~Unlawful Misrepresentations and Falsification; Refusal to Furnish Books and Records~~
Repealed
- R2-20-710. ~~Documentation of Expenditures~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R2-20-101. Definitions

In addition to the definitions provided in A.R.S. §§ 16-901 and 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Article 4.
- ~~23.~~ "Campaign account" means an account designated by a political committee that is used solely for political campaign purposes as required in A.R.S. § 16-902(C).
4. "Candidate" means an individual who receives or gives consent for receipt of a contribution for the candidate's nomination for or election to any office in this state, and includes a candidate's campaign committee, the political committee designated and authorized by a candidate, or any agents or personnel of the candidate.
- ~~35.~~ "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
46. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
- ~~57.~~ "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
- ~~68.~~ "Election Cycle," for the purpose of providing equalizing funds, means the time period between 21 days after the preceding general election and the current general election date.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and

campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.

710. "Expressly advocates" means:

- a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
- b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):
 - i. That in context can have no reasonable meaning other than to advocate the election or defeat of the candidates(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or
 - ii. In the 16 week-period immediately preceding a general election.
- c. A communication within the scope of subsection 7 10(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.

811. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.

912. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

13. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.

~~40~~14."Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).

~~44~~15."Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.

~~42~~16."Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not ~~qualified for representation~~ eligible for recognition on the ballot.

~~43~~17."Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.

~~44~~18."Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.

~~45~~19."Opposed" means a candidate who will appear on the ballot and:

- a. In a primary election for ~~the State House of Representatives~~ state representative, a candidate who has opposition for the same office from two members of the same party or will be opposed in the general election by two or more other candidates for the same office. Such opposition in the general election can be from an independent candidate, a candidate from another party, or a candidate who is a member of a political party that is not eligible ~~to appear~~ for recognition on the ballot.
- b. In a party primary election for any office but ~~the State House of Representatives~~ state representative, a candidate who has opposition for the same office from a member of the same party, or will be opposed in the general election by an independent, a candidate from another party, or a candidate who is a member of a political party that is not eligible to appear on the ballot.
- c. In the general election for state representative, a candidate who has at least two opponents on the ballot, competing for election in the same district.

- d. In the general election for any office but state representative, has at least one opponent on the ballot, competing for the same office.

4620. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.

R2-20-103. ~~Time Calculations~~ Communications: Time and Method

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Special rule for service by regular mail: whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Special rule for service by certified mail: whenever the Commission or any person ~~has the right or is~~ required to do some act within a prescribed period after the service of paper by or upon the Commission, the time period shall begin on the date the recipient signs for the certified mail. If the recipient does not date the certified mail receipt, the postmark on the certified mail receipt will be used as the date of receipt.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.

G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.

H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

R2-20-104. Certification as a Participating Candidate

~~A. Prior activities. Candidates who sought office in a prior election cycle as nonparticipating candidates and who seek certification as a participating candidate in the current election shall ensure before filing an application to become a participating candidate pursuant to A.R.S. § 16-947, that any monies in the candidate's current election campaign account in excess of permitted personal monies, early contributions, and debt retirement contributions, as defined in A.R.S. § 16-945(C), are:~~

- ~~1. Spent lawfully in a way that does not constitute a direct campaign purpose;~~
- ~~2. Remitted to the Fund, in the case of permitted early contributions; or~~
- ~~3. Transferred out of the account as disposal of surplus monies.~~
- ~~4. Any monies in the prior election campaign account shall not be used in the current election for direct campaign purposes.~~

~~B. A.~~ A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:

1. Make the change to participating candidate status during the exploratory ~~period~~ and qualifying periods only;
2. Return the amount of each contribution in excess of the \$100 individual contribution limit for participating candidates;

3. Return all Political Action Committee (PAC) monies received;
4. Not have spent contributions exceeding \$100, or any part of contributions exceeding \$100;
5. Comply with all provisions of A.R.S. § 16-941.

~~C. Surplus monies. Surplus monies from a candidate's campaign account for a prior election cycle may be used by that candidate for certain expenses without affecting that candidate's eligibility to become a participating candidate under the Act. Use of monies from a prior account is permissible only if the monies:~~

- ~~1. Are spent prior to April 30 of an election year;~~
- ~~2. Do not otherwise meet the definition of "expenditure" under A.R.S. § 16-901(8); and~~
- ~~3. The event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year.~~

B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:

1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C);
2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(8); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
3. Remitting the money to the Fund;
4. Disposing of the money in accordance with A.R.S. § 16-915.01; or
5. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.

~~D. C.~~ Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall ~~submit~~ file with the Secretary of State a Commission-approved application ~~to the secretary of state and submit a copy to the Commission. At the time the candidate submits his or~~

~~her application for certification, the candidate shall file, with the Commission, and~~ a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the candidate:

1. Agrees to use all Clean ~~Election~~ Elections funding for direct campaign purposes only;
2. Has filed with the Commission a campaign finance report, showing all campaign activity to date in the current election cycle;
3. Will comply with all requirements of the Act and Commission rules;
4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
7. Will permit an audit ~~and~~ or examination of all receipts and expenditures including those made by the candidate, ~~the candidate's authorized committee and any agent or person authorized to make expenditures on behalf of the candidate or committee.~~ The candidate ~~and the candidate's authorized committee~~ shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate ~~and authorized committee~~ shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit ~~and~~ or examination, and shall pay any amounts required to be repaid;
8. Will submit the name and mailing address of the person who is entitled to receive equalizing fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;

9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
10. Will timely file all campaign finance reports with the secretary of state in an electronic format.
11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.

~~ED.~~ If certified as a participating candidate, the candidate shall:

1. Only accept early contributions from individuals during the exploratory and qualifying periods that do not exceed \$100, in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations. The total contributions for a candidate for governor shall not exceed \$40,000. For all other candidates, the total early contributions shall not exceed 10 percent of the sum of the original primary and general election spending limits;
2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
3. Make expenditures of personal monies of no more than \$500 for legislative candidates and no more than \$1000 for statewide office candidates;
4. Conduct all activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
5. Attend at least one candidate training class sponsored by the Commission, and cause the candidate's campaign treasurer to attend at least one candidate training class, during the election cycle. If the candidate or the treasurer is unable to attend a training class, the candidate or treasurer shall:
 - a. Notify the Commission that the candidate or treasurer is unable to attend a training class. the Commission then will send that person the Commission training materials; and
 - b. The candidate or treasurer shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials;

6. Limit campaign expenditures. Prior to qualifying for clean elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State's office, a candidate may incur debt, or make an expenditure, not to exceed the sum of the cash on hand and the applicable spending limit.

~~FE.~~ Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). These loans shall promptly be repaid with Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate ~~or his or her campaign committee~~ shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).

~~GF.~~ Officeholder Expenses. Prior to April 30 of an election year, an elected official may raise or spend money to defray the expense of performing officeholder duties and the event or item purchased shall be completed or otherwise used and depleted prior to April 30 of an election year, as follows:

1. The candidate may first exhaust all surplus monies from prior campaign accounts pursuant to subsection (~~C~~) (B) of this rule or may use personal monies for officeholder expenses;
2. Money raised shall be only from individuals and the maximum raised from an individual during the election cycle shall not exceed one-half the early contribution limit;
3. The sum of the money raised or spent shall not exceed two times the early contribution limit applicable to the officeholder's current office;
4. For an officeholder's future campaign as a:
 - a. Participating Candidate-
 - i. Money raised pursuant to this subsection will not be deemed early contributions, and
 - ii. Personal money spent pursuant to this subsection shall not apply to personal money expenditure limits provided in A.R.S. § 16-941(A)(2).
 - b. Nonparticipating Candidate-
 - i. Money raised or spent pursuant to this subsection will not be calculated in matching funds to opponents as provided in A.R.S. § 16-952, and

ii Money raised or spent pursuant to this subsection will not trigger the reporting requirements provided in A.R.S. §§ 16-941(D) and 16-958.

~~e.5.~~ Any money raised or spent in excess of the limits established in this ~~subsection~~ Section, however, shall be calculated as early contributions or personal monies for participating candidates, or for matching funds and reporting requirements for nonparticipating candidates;

~~5.6.~~ Money raised or spent for officeholder expenses shall be reported under campaign finance reporting requirements pursuant to A.R.S. Title 16, Chapter 6, Article 1 as follows:

- a. The officeholder shall establish an account for officeholder expenses, which shall be separate from any candidate campaign account;
- b. The account shall be designated on the statement of organization as "Officeholder Expense Account;" and
- c. Any money remaining in the officeholder expense account after April 30 of an election year shall either not be spent for the remainder of the calendar year, or shall be remitted to the ~~clean elections fund~~ Clean Elections Fund;

~~6.7.~~ Money in the officeholder expense account shall not be used for direct campaign purposes or in connection with the officeholder's future campaign for elective office; and

~~7.8.~~ Permissible uses of the money in the officeholder expense account include:

- a. Expenditures for office equipment and supplies;
- b. Expenditures for work-related travel;
- c. Donations to tax-exempt charitable organizations; or
- d. Expenditures to meet or communicate with constituents.

~~H.G.~~ A participating candidate may raise early contributions for election to one office and choose to run for election to another office ~~during the exploratory period only~~.

~~I.~~ ~~A candidate may accept qualifying contributions before the candidate is certified as a participating candidate. A candidate who accepts qualifying contributions prior to being certified as a participating candidate shall file his or her application for certification no later than January 31 of an election year.~~

~~J.H.~~ If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the act or Commission rules, the Commission may decertify a

candidate, deny or suspend funding, order repayment of funds, or impose any other penalty the Commission deems appropriate.

I. Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

~~R2-20-107. Use of Clean Elections Funds Repealed~~

~~A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).~~

~~B. A participating candidate shall not use funds in the candidate's campaign account for:~~

- ~~1. Costs of legal defense in any campaign law enforcement proceeding;~~
- ~~2. Food for staff and volunteers exceeding the monetary limits set forth in A.R.S. § 38-624.~~
- ~~3. Indirect campaign purposes, including, but not limited to:~~
 - ~~a. The candidate's personal support;~~
 - ~~b. The candidate's personal appearance;~~
 - ~~c. Capital assets having a value in excess of \$500 and a useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;~~
 - ~~d. A contribution or transfer of funds to the campaign of another;~~
 - ~~e. An independent expenditure;~~
 - ~~f. A loan to self or to another. This does not include the loans acceptable under R2-20-104(F);~~
 - ~~g. A gift;~~
 - ~~h. Any payment or transfer for which compensating value is not received;~~
 - ~~i. Compensation to the candidate;~~
 - ~~j. Compensation to a candidate's family member unless employed as a campaign staff member for fair market value;~~
 - ~~k. A contribution to any political party;~~
 - ~~l. Retroactive payments of any kind;~~
 - ~~m. Excessive expenditures in excess of any of the limitations or in excess of fair market value of goods or services received;~~
 - ~~n. Post election expenditures. Expenditures incurred after the close of the primary (if the candidate did not win the primary election) or general election periods, unless it can be shown~~

it was a cost associated with winding down the campaign;

~~o. Civil or criminal penalties;~~

~~p. Illegal purposes;~~

~~q. Transferring funds to another committee; or~~

~~r. Paying bills, loans or debt from a prior campaign cycle.~~

~~C. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.~~

~~D. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.~~

~~E. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.~~

~~F. Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:~~

- ~~1. The activity includes express advocacy of the election or defeat of a second candidate;~~
- ~~2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;~~
- ~~3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;~~
- ~~4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;~~
- ~~5. The timing of the material or activity in relation to the election of a second candidate;~~
- ~~6. The distribution of the material or the activity is targeted to a second candidate's electorate; or~~
- ~~7. The amount of control a second candidate has over the material or activity.~~

R2-20-109. Reporting Requirements

- ~~A. End of qualifying period. At the end of the qualifying period, a participating candidate shall file a report with the Commission consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account that will refund all unspent early contributions to the Fund, pursuant to A.R.S. § 16-945(B).~~
- ~~B. Use of assets. A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.~~
- ~~C. Reporting of transactions; Secretary of State's computer software. All candidates shall report all receipts and disbursements for their current campaign account using the campaign finance computer software provided by the Secretary of State pursuant to A.R.S. § 16-958(E) as follows:~~
- ~~1. In accordance with A.R.S. § 16-915 and using the appropriate account code in the campaign finance software, candidates shall identify expenditures made before the general election period that consist of a contract, promise, or agreement to make an expenditure during the general election period. Goods or services to be furnished in the general election period are to be reported in accordance with this rule. The Commission shall treat such expenditures as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.~~
 - ~~2. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service and an allocation of services to a particular election. The Commission may treat such expenditure as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.~~
 - ~~3. Original and supplemental campaign finance reports filed pursuant to A.R.S. § 16-941 shall include the same information regarding receipts and disbursements as required by A.R.S. § 16-915.~~
- ~~D. Independent expenditures.~~
- ~~1. Any individual, corporation, political party or membership organization that makes independent~~

~~expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in R2-20-101(7), shall file reports with the secretary of state in accordance with A.R.S. § 16-958.~~

~~2. These reports must identify the office and the candidate or group of candidates whose election or defeat is being advocated, and state whether it is election or defeat that is being advocated. The Commission views an expenditure that advocates the election or defeat of a candidate as being made on behalf of the candidate.~~

~~3. The person who fails to file a report pursuant to this subsection shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B).~~

~~4. In determining whether a communication shall be reported pursuant to A.R.S. §§ 16-941(D) and 16-958, the Commission shall consider whether the communication expressly advocates the election or defeat of a clearly identified candidate and was not made in concert with a candidate. In determining that a communication expressly advocates the election or defeat of a candidate, rather than a communication that advocates an issue, the Commission will review the following three components:~~

~~a. Even if it is not presented in the clearest, most explicit language, speech is “express” if its message is unmistakable, unambiguous, and suggestive of only one plausible meaning.~~

~~b. Speech may only be termed “advocacy” if it presents a clear plea for action, and thus speech that is merely informative is not covered by the act.~~

~~c. It must be clear what action is advocated. Speech cannot be “express advocacy of the election or defeat of a clearly identified candidate” when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. If any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the act’s disclosure requirements.~~

~~E. The following will be considered to be a “contribution during the election cycle to date” or “expenditures . . . made through the end of the primary election period” for purposes of reporting under A.R.S. §§ 16-941(B)(2) and 16-958(A):~~

~~1. A contribution to a candidate to retire debt from a prior election cycle if deposited into the current campaign account;~~

~~2. Any contributions received and placed in a future account or expenditures made during the current election cycle;~~

~~3. Surplus funds transferred into the current campaign account;~~

~~4. Contributions received or expenditures made beginning 21 days after the date of the prior election~~

~~F. Recap report. Each participating candidate shall include a recap of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made from such candidate's campaign fund to the Citizens Clean Elections Fund. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account that will refund to the Fund all unspent funds provided by the Fund.~~

~~G. Electronic format. All reports shall be filed in electronic format in accordance with A.R.S. § 16-958(E). The Commission shall coordinate with the secretary of state to make electronic filing computer software available to candidates and their committees. If a report is specifically requested by a candidate or campaign committee, the Commission will deliver copies of reports required under A.R.S. § 16-958. Otherwise, such reports shall be available on the secretary of state's web site.~~

A. Reporting of transactions; Secretary of State's computer software. All campaign finance reports shall be filed in electronic format in accordance with A.R.S. § 16-958(E). The Commission shall coordinate with the Secretary of State to make electronic-filing computer software available to candidates. If a campaign finance report is specifically requested by a candidate, the Commission will deliver copies of campaign finance reports required under A.R.S. § 16-958. Otherwise, such campaign finance reports shall be available on the Secretary of State's web site. All candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account using the campaign finance computer software provided by the Secretary of State as follows:

1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. The Commission may treat such expenditures as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.

2. Original and supplemental campaign finance reports filed pursuant to A.R.S. §§ 16-941 and 16-958 shall include the same information regarding receipts and disbursements as required by A.R.S. §16-915.

- B. Participating candidate reporting requirements. In addition to the campaign finance reports filed pursuant to A.R.S. § 16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
1. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of persons who have made qualifying contributions to the candidate.
 2. End of qualifying period. At the end of the qualifying period, a participating candidate shall file a recap campaign finance report consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies.
 - a. The recap campaign finance report for the qualifying period shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
 - b. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will remit all unspent early contributions to the fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidate's family member within five days.
 3. Primary election and general election recap campaign finance reports. Each participating candidate shall file a campaign finance report consisting of a recap of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made from such candidate's campaign fund to the Clean Elections Fund. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will return all unspent monies to the Fund.
 - a. The recap campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.

- b. The recap campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. §16-913(B)(3).

C. Amending Reports. If a candidate determines that a previously filed campaign finance report contains inaccurate information, then the candidate shall amend the campaign finance report to provide accurate information.

1. Except when a new election period has started, a participating candidate who received clean elections funding based upon an inaccurate campaign finance report shall remit to the Commission the excess funds as determined by the amended campaign finance report within five days after filing the amended campaign finance report.
2. If the participating candidate does not have sufficient funds in his or her account to return the required monies, the balance owed shall be withheld from future matching funds due to the participating candidate in the election period during which the excess funds were awarded.

D. Independent expenditures.

1. Any individual, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding the amount prescribed in A.R.S. §16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in R2-20-101(7), shall file campaign finance reports with the Secretary of State in accordance with A.R.S. §16-958.
2. The person who fails to file a campaign finance report pursuant to this subsection shall be subject to a civil penalty as prescribed in A.R.S. §16-942(B).
3. In determining whether a communication shall be reported pursuant to A.R.S. §§16-941(D) and 16-958, the Commission shall consider whether the communication expressly advocates the election or defeat of a clearly identified candidate and was not made in concert with a candidate. In determining that a communication expressly advocates the election or defeat of a candidate, rather than a communication that advocates in favor of or against an issue, the Commission will consider the following three components.

- a. Even if it is not presented in the clearest, most explicit language, speech is “express” if its message is unmistakable, unambiguous, and suggestive of only one plausible meaning.
 - b. Speech may only be termed “advocacy” if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act.
 - c. It must be clear what action is advocated. Speech cannot be “express advocacy of the election or defeat of a clearly identified candidate” when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. If any reasonable alternative reading of speech can be suggested, it cannot be “express advocacy” subject to the Act’s disclosure requirements.
- E. The following will be considered to be a "contribution during the election cycle to date" or "expenditures... made through the end of the primary election period" for purposes of reporting under A.R.S. §§ 16-941(B)(2) and 16-958(A):
- 1. A contribution to a candidate to retire debt from a prior election cycle if deposited into the current campaign account;
 - 2. Any contributions received and placed in a future, current, or prior, campaign account during the current election cycle;
 - 3. Surplus funds transferred into the current campaign account;
 - 4. Contributions received or expenditures made beginning 21 days after the date of the prior general election;

R2-20-111. Books and Records Requirements

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904. ~~In all cases, such location shall be that of the principal headquarters of the candidate’s campaign, and at such location all such information shall be made available for inspection by the Commission during the regular business hours of the Commission.~~
- B. ~~The location of each candidate’s principal campaign headquarters may be maintained in the same county as that of the residence of the candidate, or in Maricopa County.~~ All candidates shall ensure

that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:

1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
 - a. All contributions or other monies received by or on behalf of the candidate.
 - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into a campaign account.
 - c. Cumulative totals contributed by each individual or political committee.
 - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
 - e. All periodic bank statements or other statements for the campaign account.
 - f. All activity related to petty cash accounts.
2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
5. The treasurer shall preserve all records set forth in subsection (B) and copies of all finance reports required to be filed for three years after the filing of the finance report covering the receipts and disbursements evidenced by the records.

6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.

C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be ~~in writing, and shall be delivered~~ sent to the candidate ~~and his or her campaign committee chair~~, with a copy to the Commission, 10 or more ~~calendar~~ days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two ~~business~~ days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

~~D~~1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office.

~~E.~~ The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.

~~F~~2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.

~~G~~3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.

~~H~~4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958 (F) is denied such a request, the requesting party ~~shall~~ may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956 (C) for the production of any books, papers, records or other items sought in the public inspection request. The subpoena shall order the candidate to produce:

~~1~~a. All papers, records, or other items sought in the public inspection request;

~~2~~b. No later than two business days after the date of the subpoena; and

~~3~~c. To the Commission's office during regular business hours.

~~I~~5. Any person who believes that a candidate ~~or a candidate's campaign committee~~ has not complied with this Section may appeal to Superior Court.

R2-20-112. ~~Inaugural expenses~~ Repealed

~~This section shall apply only to statewide candidates who were participating candidates during the prior election cycle, were elected to office and wish to raise money for inauguration.~~

- ~~1. Beginning the first day after the official declaration of general elections results, and ending February 15 of the following year, participating candidates for statewide office, who were successful in the general election, may solicit and receive contributions and make expenditures to pay for an inaugural ceremony or event if such financial activity is made solely in connection with that candidate's inauguration in January following the election.~~
- ~~2. If a participating candidate receives contributions that are greater than the expenses incurred for an inaugural ceremony or event, that candidate shall donate any such excess contributions to the Citizens Clean Elections Fund within 60 days of such ceremony or event.~~
- ~~3. All financial activity undertaken by a candidate pursuant to this Section shall be managed through a specifically segregated fund, established to defray expenses of an inauguration ceremony or event. The monies contained in such inauguration fund shall be kept separate within the candidate's campaign account used for the successful election. A report of all receipts and expenditures regarding the inaugural fund shall be filed by the first day of March immediately following the election.~~
- ~~4. A candidate's financial activity related to an inaugural ceremony or event shall not prevent that candidate from becoming a participating candidate for the next election if that candidate has complied with the provisions of this Section. Such candidate's inaugural financial activity shall not be considered a contribution or expenditure for the purpose of a future election nor count toward any contribution or expenditure limit applicable to such election.~~

R2-20-113. ~~Repealed~~ Calculation of Matching Funds

A. During the primary election period, the Commission shall pay any participating candidate in the same party primary of a nonparticipating candidate, the amount of the nonparticipating candidate's expenditures in excess of the amount over the primary election spending limit, not to exceed three times the original primary election spending limit, as follows:

1. The nonparticipating candidates' expenditures, which are defined as:

- a. Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state;
 - b. A promise or agreement to make an expenditure resulting in an extension of credit; and
 - c. The value of any in-kind contribution received.
 2. If an independent expenditure is made against a participating candidate, the participating candidate will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure. The participating candidate who was the subject of the expenditure will be the only candidate eligible to receive the matching funds, if applicable, for the cost of that expenditure.
 3. If an independent expenditure is made in favor of one or more nonparticipating candidates, all participating candidates in the party primary of the candidate favored by the expenditure will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure.
 4. If an independent expenditure is made in favor of a participating candidate, all of the other participating candidates in that party primary will be eligible to receive matching funds, if applicable, for the cost of that expenditure.
- B. During the general election period, a participating candidate will receive matching funds when the opposing nonparticipating candidate has received in contributions to date, less the amount of expenditures the nonparticipating candidate made through the end of the primary election period, an amount that exceeds the general election spending limit. The Commission shall pay any participating candidate seeking the same office an amount equal to any excess over the general election spending limit, not to exceed three times the original general election spending limit, as follows:
1. The nonparticipating candidate's contributions include:
 - a. Surplus funds transferred from previous campaign accounts and deposited into the current campaign account;
 - b. Individual contributions;
 - c. \$25 or less contributions;
 - d. In-kind contributions;
 - e. Political committee contributions;
 - f. Personal monies;

g. Candidate or family loans; and

h. Other loans.

2. In accordance with A.R.S. § 16-952, the nonparticipating candidate's contributions shall not include offsets to contributions, including a refund of a contribution to an individual contributor or to a political committee contributor.

3. In accordance with A.R.S. § 16-952(C)(4), when a participating candidate is opposed in the general election by an independent candidate or nonparticipating candidate who was unopposed in the party primary, expenditures made during the primary election period by the nonparticipating candidate or independent candidate will not be included in the calculation of matching funds.

4. If an independent expenditure is made against a participating candidate, the participating candidate will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure. The participating candidate who was the subject of the expenditure will be the only candidate eligible to receive the matching funds, if applicable, for the cost of that expenditure.

5. If an independent expenditure is made in favor of one or more nonparticipating candidates, all participating candidates in the election for that same office will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure.

6. If an independent expenditure is made in favor of a participating candidate, all of the other participating candidates in the election for that office will be eligible to receive the matching funds, if applicable, for the cost of that expenditure.

C. Independent expenditures made against a nonparticipating candidate during the primary or general election periods will not be considered in the calculation of matching funds for a participating candidate.

D. The Commission shall cease to disburse matching funds for an election period after the Wednesday following the primary or general election day.

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-203. Complaints

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director, ~~Citizens Clean Elections Commission, 4001 North Third Street, Suite 200, Phoenix, AZ 85012.~~
- B. A complaint shall conform to the following:
1. Provide the full name and address of the complainant; and
 2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint ~~should~~ shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
 2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
 3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
 4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

R2-20-205. Opportunity for No Action on Complaint-generated Matters

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within ~~14~~ five days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the ~~14~~ five day period specified in subsection (A).
- C. The respondent's response ~~must~~ shall be notarized. The respondent's failure to respond in accordance with subsection (A) within ~~14~~ five days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint.

R2-20-206. Administrative Counsel's Recommendation on Complaint-generated Matters

- A. Following either the expiration of the ~~14~~ five day period specified by R2-20-205 or the receipt of a response as specified by R2-20-205(A), whichever occurs first:
1. ~~the Administrative Counsel~~ The Executive Director may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction; or
 - ~~B.2.~~ The Administrative Counsel may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of R2-20-205(A).
- ~~C.B.~~ Neither the complainant nor the respondent has the right to appeal the Administrative Counsel's recommendation made pursuant to ~~subsections (A) or (B)~~ subsection (A) because the recommendation is not a final administrative action.

R2-20-208. Complaint Processing; Notification

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding ~~by letter~~, setting forth the sections of the statute or rule

alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.

- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Administrative Counsel shall so ~~advise~~ notify both the complainant and respondent ~~by letter~~.
- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957 (C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings.

R2-20-212. Service of Subpoenas, Orders and Notifications Repealed

- ~~A. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, or by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.~~
- ~~B. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.~~

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the Administrative Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.

- B. The Administrative Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within ~~40~~ five days from receipt of the Administrative Counsel's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Administrative Counsel shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

R2-20-217. Enforcement Proceedings

- A. Upon a finding of probably cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. ~~Upon recommendation of the Executive Director, the~~ The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).

R2-20-218. ~~Public Disclosure of Commission Action~~ Repealed

- ~~A. If the Commission makes a finding pursuant to R2-20-207, R2-20-208, or R2-10-215 or otherwise terminates its proceedings, the Commission shall make its findings public and notify the complainant and respondent.~~
- ~~B. If the Commission approves a conciliation agreement pursuant to R2-20-216, the Commission shall make the conciliation agreement public and notify the complainant and respondent.~~
- ~~C. For any compliance matter in which the Commission commences an enforcement proceeding pursuant to R2-20-217, the Commission will make public the investigator materials in the enforcement and litigation files in accordance with public records laws, A.R.S. § 39-101, and the Commission shall send the complainant and the respondent the required notification of the final disposition of the action. The final disposition may consist of a final agency decision.~~

R2-20-223. Notice of Appealable Agency Action

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to ~~R2-20-218~~ R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

R2-20-229. Debates Sponsored by the Commission Repealed

- ~~A. For purposes of this Section, each primary or general election shall be considered a separate election.~~
- ~~B. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947, shall attend and participate in the debates sponsored by the Commission.~~
- ~~C. Unless exempted under R2-20-230 or R2-20-231, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall:~~
- ~~1. Make no further expenditures for that specific election;~~
 - ~~2. Return all funding provided pursuant to A.R.S. § 16-951 within 30 days of the debate in which the candidate failed to participate; and~~
 - ~~3. Be ineligible to receive any further equalizing funds for that election.~~

R2-20-230. Exemption from Participating in a Debate Repealed

- ~~A. Notwithstanding R2-20-229, a participating candidate may request to be exempt from participating in a required debate if the candidate does the following:~~
- ~~1. Submit a written request to the Commission at least one week prior to the scheduled debate; and~~
 - ~~2. State the reasons and circumstances justifying the request for exemption.~~
- ~~B. After examining the request made pursuant to subsection (A) of this Section, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:~~
- ~~1. Beyond the control of the candidate;~~
 - ~~2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or~~
 - ~~3. Good cause, as defined in A.R.S. § 16-918(E).~~

RESERVED

ARTICLE 4. AUDITS

R2-20-401. Purpose and Scope

This Article prescribes procedures for conducting examinations and audits of participating and nonparticipating candidates' campaign finances.

R2-20-402. General

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

R2-20-403. Conduct of Fieldwork

- A. The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than two days after service of the Commission's request.
- B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be

present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.

- C. If the candidate fails to provide adequate office space, personnel or records, the Commission may seek judicial intervention to enforce the request or assess other penalties.
- D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

R2-20-404. Preliminary Audit Report

- A. After the completion of fieldwork, the Commission may prepare a written preliminary audit report, which will be provided to the candidate after it is approved by an affirmative vote of at least three members of the Commission. The preliminary audit report may include:
1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules;
 2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate; and
 3. Preliminary findings.
- B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.
- C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

R2-20-405. Final Audit Report

- A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with R2-20-

404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.

B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.

C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

R2-20-406. Release of Audit Report.

A. The Commission will consider the final audit report specified in R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.

B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within five days after the public meeting.

ARTICLE 7. AUDITS AND REPAYMENTS USE OF FUNDS AND REPAYMENT

R2-20-701. Purpose and Scope

~~This Article prescribes procedures for conducting audits of and ordering repayment of public monies from participating candidates.~~

A participating candidate may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

R2-20-702. General Use of Campaign Funds

~~The Commission may conduct a thorough examination and audit of the receipts, disbursements, debts, and obligations of each candidate, his or her authorized committee, and agents of participating candidates or committees. In addition, the Commission may conduct other examinations and audits as it deems necessary~~

~~to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.~~

A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).

B. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.

C. A participating candidate shall not use funds in the candidate's campaign account for:

1. Costs of legal defense in any campaign law enforcement proceeding.
2. Food and beverages for staff and volunteers exceeding \$7 for breakfast, \$7.50 for lunch, and \$15 for dinner.
3. Personal use, which includes any item listed below:
 - a. Household food items or supplies.
 - b. Clothing, other than items of de minimus value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
 - c. Tuition payments, other than those associated with training campaign staff.
 - d. Mortgage, loan, rent, lease or utility payments:
 1. For any part of any personal residence of the candidate or a member of the candidate's family; or
 2. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
 - e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.

f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.

g. Gifts or donations.

4. Fixed assets with a value in excess of \$600.

R2-20-703. Conduct of Fieldwork Documentation for Direct Campaign Expenditures

- ~~A. The Commission will provide the candidate's authorized committee two days' notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after audit fieldwork, the Commission may also request additional information that was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated information no later than two days after service of the Commission's request.~~
- ~~B. On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee shall provide Commission staff with office space and committee records.~~
- ~~C. On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.~~
- ~~D. If the candidate or his or her authorized committee fails to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention to enforce the request.~~
- ~~E. If, in the course of the audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternatives.~~

~~F. Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:~~

- ~~1. Entrance conference. At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the Fund, also will be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.~~
- ~~2. Review of records. During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.~~
- ~~3. Exit conference. At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations that the staff anticipates it will present to the Commission for approval. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these preliminary findings; the projected timetables regarding the issuance of the Preliminary Audit Report, the Final Audit Report, and any repayment determination; the committee's opportunity for an administrative review of any repayment determination; and the procedures involved in Commission repayment determinations.~~

~~G. Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to subsections (A) through (F). The Commission will notify the candidate and his or her authorized committee if follow up field work is necessary. Factors that may necessitate such follow up fieldwork include, but are not limited to, the following:~~

- ~~1. Committee response to audit findings;~~
- ~~2. Financial activity of the committee subsequent to the fieldwork conducted; and~~
- ~~3. Committee responses to Commission repayment determinations.~~

A. In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:

1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$300 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.

B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a “no action” letter. A “no action” letter applies only to the candidate who requested it.

C. Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate’s payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:

1. The activity includes express advocacy of the election or defeat of more than two candidates;

2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
5. The timing of the material or activity in relation to the election of a second candidate;
6. The distribution of the material or the activity is targeted to a second candidate's electorate; or
7. The amount of control a second candidate has over the material or activity.

R2-20-704. ~~Preliminary Audit Report~~ Repayment

~~A. Commission staff will prepare a written Preliminary Audit Report, which will be provided to the committee after it is approved by an affirmative vote of at least three members of the Commission. The Preliminary Audit Report may include:~~

- ~~1. An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Act and Commission rules;~~
- ~~2. The accuracy of statements and reports filed with the Commission by the candidate and committee; and~~
- ~~3. Preliminary findings and calculations regarding future repayments to the Fund.~~

~~B. The candidate and his or her authorized committee may submit in writing within 30 calendar days after receipt of the Preliminary Audit Report, legal and factual materials disputing or commenting on the proposed findings contained in the Preliminary Audit Report. In addition, the committee shall submit any additional documentation requested by the Commission.~~

A. In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.

1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the

Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.

2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible, but not later than one year after the day of the election.
3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's accounts, and any additional funds raised subject to the limitations and prohibitions of the Act.
5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.

B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:

1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.

5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.

6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.

C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:

1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.

2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.

D. Repayment period.

1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.

2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days

after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.

3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:

a. An amount calculated in accordance with A.R.S. § 44-1201(A); or

b. The amount actually earned on the funds set aside or to be repaid under this Section.

R2-20-705. ~~Final Audit Report~~ Additional Audits or Repayment Determinations

~~A. Before voting on whether to approve and issue a Final Audit Report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with R2-20-704. The Commission approved Final Audit Report may address issues other than those contained in the Preliminary Audit Report.~~

~~B. The Final Audit Report may include a repayment determination made by the Commission and issues that warrant referral for possible enforcement proceedings.~~

~~C. Addenda to the Final Audit Report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set forth in R2-20-704 and subsections (A) and (B) of this Section will be followed in preparing such addenda.~~

A. The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous

determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

R2-20-706. Release of Audit Report Repealed

- ~~A. The Commission will consider the Final Audit Report specified in R2-20-705 in an open meeting. The Commission will provide the candidate and the committee with copies of any audit report to be considered in an open meeting 24 hours prior to the public meeting.~~
- ~~B. Following Commission approval of the Final Audit Report, the report will be forwarded to the committee within five days after the public meeting.~~

R2-20-707. Repayment Repealed

~~A. General.~~

- ~~1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable under this Article. In making repayment determinations under this Article, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.~~
- ~~2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible, but not later than six months after the day of the election. The Commission's issuance of the Final Audit Report to the candidate will constitute notification for purposes of this Article.~~
- ~~3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any taxes owed by the committee.~~
- ~~4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the committee's accounts, and any additional funds raised subject to the limitations and prohibitions of the Act.~~

- ~~B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:~~

- ~~1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.~~
 - ~~2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-107, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.~~
 - ~~3. Expenditures that were not documented in accordance with reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.~~
 - ~~4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.~~
 - ~~5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.~~
 - ~~6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.~~
- ~~C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:~~
- ~~1. Repayment determination. The Commission will provide the candidate with a written notice of its repayment determination. This notice will be included in the Commission's Final Audit Report and will set forth the legal and factual reasons for such determination, as well as the evidence upon~~

~~which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.~~

- ~~2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et seq.~~

~~D. Repayment period.~~

- ~~1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.~~
- ~~2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 calendar days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.~~
- ~~3. Interest shall be assessed on all repayments made after the initial 30 day repayment period or the 30 day repayment period established by this Section. The amount of interest due shall be the greater of:
 - ~~a. An amount calculated of simple interest; or~~
 - ~~b. The amount actually earned on the funds set aside or to be repaid under this rule.~~~~

~~R2-20-708. Additional Audits or Repayment Determinations Repealed~~

- ~~A.~~** ~~The Commission may conduct an additional audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.~~
- ~~B.~~** ~~The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-707. The Commission may make additional repayment~~

~~determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.~~

~~R2-20-709. Unlawful Misrepresentations and Falsification; Refusal to Furnish Books and Records~~
Repealed

- ~~A. It shall be unlawful for any person to knowingly and willfully furnish any false, fictitious, or fraudulent evidence, books or information to the Commission, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission.~~
- ~~B. It shall be unlawful for any person to knowingly and willfully fail to furnish to the Commission any records, books or information requested by the Commission.~~

~~R2-20-710. Documentation of Expenditures~~ **Repealed**

- ~~A. All participating candidates shall have the burden of proving that expenditures made by the candidate or his or her authorized committee were for direct campaign purposes. The candidate and his or her authorized committee shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate or his or her authorized committee as provided in subsection (B).~~
- ~~B. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.~~
- ~~C. All participating candidates shall maintain a list of all capital assets whose purchase price exceeded \$300 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.~~

NOTICE OF PROPOSED EXEMPT RULEMAKING

PREAMBLE

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R2-20-103.	Amend
R2-20-104.	Amend
R2-20-107	New Section
R2-20-206.	Amend
R2-20-208.	Amend
R2-20-214.	Amend
R2-20-217.	Amend
R2-20-231.	Repeal
R2-20-702.	Amend
R2-20-702.01	New Section
R2-20-703.	Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 16-956(C), 16-956(D), 16-958(F)
Implementing statute: A.R.S. §§ 16-940 through 16-961
Statute Authorizing Exemption: A.R.S. § 16-956(C)

3. The effective date of the rules:

Upon pre-clearance from the Department of Justice

4.A list of all previous notices appearing in the Register addressing the exempt rule:

6 A.A.R. 1567, effective June 21, 2000
8 A.A.R. 588, effective November 27, 2001
9 A.A.R. 3506, effective April 2, 2002
9 A.A.R. 3511, effective May 21, 2002

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Todd Lang, Executive Director
Genevra Richardson, Campaign Finance Manager
Address: 1616 W. Adams, #110

Telephone: 602-364-3477
Fax: 602-364-3487
E-mail: todd.lang@azcleelections.gov or g.richardson@azcleelections.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

The Commission is complying with A.R.S. §§ 16-956(C), 16-956(D) and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through -961) to implement rules related to candidate communication and certification, debates, bookkeeping, matching funds, complaints, enforcement, audits, use of campaign funds and use of assets.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not Applicable.

9. The summary of the economic, small business, and consumer impact:

Not Applicable.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not Applicable.

11. A summary of the comments made regarding the rule and the agency response to them:

Not Applicable.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not Applicable.

13. Incorporations by reference and their location in the rules:

None.

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

SECTION

- R2-20-103. Communications: Time and Method
- R2-20-104. Certification as a Participating Candidate
- R2-20-107 ~~Repealed~~ Candidate Debates

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

SECTION

- R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-Generated Matters
- R2-20-208. Complaint Processing; Notification
- R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures
- R2-20-217. Enforcement Proceedings
- R2-20-231. ~~Request for Reconsideration~~ Repealed

ARTICLE 7. USE OF FUNDS AND REPAYMENT

SECTION

- R2-20-702. Use of Campaign Funds
- R2-20-702.01 Use of Assets
- R2-20-703. Documentation for Direct Campaign Expenditures

ARTICLE 1. GENERAL PROVISIONS

R2-20-103. Communications: Time and Method

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.

R2-20-104. Certification as a Participating Candidate

- A. No change.
1. No change.
 2. Return the amount of each contribution in excess of the ~~\$100~~ individual contribution limit for participating candidates;
 3. No change.
 4. Not have spent contributions exceeding ~~\$100~~ the early contribution limit, or any part of ~~contributions~~ a contribution exceeding ~~\$100~~ the early contribution limit;
 5. No change.
- B. No change.

1. No change.

2. No change.

3. No change.

4. No change.

5. No change.

C. No change.

1. No change.

2. Has filed ~~with the Commission~~ a campaign finance report, showing all campaign activity to date in the current election cycle;

3. No change.

4. No change.

5. No change.

6. No change.

7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;

8. No change.

9. No change.

10. No change.

11. No change.

D. No change.

1. Only accept early contributions from individuals during the exploratory and qualifying periods ~~that do not exceed \$100~~, in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations. ~~The total contributions for a candidate for governor shall not exceed \$40,000. For all other candidates, the total early~~

~~contributions shall not exceed 10 percent of the sum of the original primary and general election spending limits;~~

2. No change.
 3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) \$500 for legislative candidates and ~~no more than \$1000~~ for statewide office candidates;
 4. No change.
 5. No change.
 - a. No change.
 - b. No change.
 6. No change.
- E. Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). If the loan is to be repaid, ~~These~~ the loans shall ~~promptly~~ be repaid promptly with upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F. No change.
1. No change.
 2. No change.
 3. No change.
 4. No change.
 - a. No change.
 - i. No change.
 - ii. No change.
 - b. No change.
 - i. No change.
 - ii. No change.

5. No change.
6. No change.
 - a. No change.
 - b. No change.
 - c. No change.
7. No change.
8. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.

G. No change.

H. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the ~~act~~ Act or Commission rules, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose any other penalty the Commission deems appropriate.

I. No change.

R2-20-107. ~~Repealed~~ Candidate Debates

A. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections unless there is no participating candidate in the election for a particular office.

B. In the primary election, the Commission shall sponsor primary election debates as follows:

1. According to political party affiliation of candidates, recognized on the official ballot, where at least one of the candidates is a participating candidate, and
2. Party primary candidates are opposed in the election for the political party's nomination.

C. The following candidates will not be invited to participate in debates as follows:

1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.

2. In the general election, write-in candidates.

D. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission.

E. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be ineligible to receive any further equalizing funds for that election. For purposes of this section, each primary or general election shall be considered a separate election.

F. A participating candidate may request to be exempt from participating in a required debate by doing the following:

1. Submit a written request to the Commission at least one week prior to the scheduled debate;
and
2. State the reasons and circumstances justifying the request for exemption.

G. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least 3 Commissioners determine that the circumstances are:

1. Beyond the control of the candidate;
2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
3. Good cause, as defined in A.R.S. § 16-918(E).

H. A participating candidate who fails to participate in a required debate may submit a request for reconsideration to the Commission.

1. The candidate's request for reconsideration shall:
 - a. State the reason the candidate failed to participate in the debate; and
 - b. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
2. After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
 - a. Beyond the control of the candidate;
 - b. Of such nature that a reasonable person would find the failure to attend justifiable or

excusable; or

c. Good cause, as defined in A.R.S. § 16-918(E).

- I. When a participating candidate is unopposed in the candidate's party primary election, the candidate shall be exempt from participating in a Commission-sponsored debate for the primary election.
When a participating candidate is unopposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-generated Matters

- A. No change.
1. No change.
 2. The ~~Administrative Counsel~~ Executive Director may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of R2-20-205(A).
- B. Neither the complainant nor the respondent has the right to appeal the ~~Administrative Counsel's~~ Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not a final administrative action.

R2-20-208. Complaint Processing; Notification

- A. No change.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the ~~Administrative Counsel~~ Executive Director shall so notify both the complainant and respondent.
- C. No change.

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the ~~Administrative Counsel~~ Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The ~~Administrative Counsel~~ Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the ~~Administrative Counsel's~~ Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the ~~Administrative Counsel~~ Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

R2-20-217. Enforcement Proceedings

- A. Upon a finding of ~~probably~~ probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C. Subsections A and B of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection B. Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

R2-20-231. Request for Reconsideration Repealed

- A. ~~A participating candidate who fails to participate in a required debate, without exemption pursuant to A.A.C. R2-20-230, may submit a request for reconsideration to the Commission. The candidate's request for reconsideration shall:~~
- ~~1. State the reason the candidate failed to participate in the debate; and~~
 - ~~2. Be submitted to the Commission no later than 5 business days after the date of the debate the candidate failed to attend.~~
- B. ~~After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed pursuant to A.A.C. R2-20-229 if at least 3 Commissioners determine that the circumstances were:~~
- ~~1. Beyond the control of the candidate;~~
 - ~~2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or~~
 - ~~3. Good cause, as defined in A.R.S. § 16-918(E).~~

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-702.01 Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

R2-20-703. Documentation for Direct Campaign Expenditures

- A. No change.
1. No change.
 2. No change.
 3. No change.

B. No change.

C. No change.

1. No change.

2. No change.

3. No change.

4. No change.

5. No change.

6. No change.

7. No change.

D. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.